

1
2
3
4
5
6
7 HOLLY GEHL, et al.,
8 Plaintiffs,
9 v.
10 T-BIRD RESTAURANT GROUP, INC., et
11 al.,
Defendants.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 13-cv-05961-KAW

ORDER GRANTING MOTION TO
WITHDRAW AS COUNSEL OF RECORD
FOR PLAINTIFF SHANNON SPALDING
AND FOR WITHDRAWAL OF
SHANNON SPALDING AND BRITNNI
ZACHER AS NAMED PLAINTIFFS

Dkt. No. 53

On September 26, 2014, Plaintiffs' counsel filed a motion for leave to withdraw as counsel of record for Plaintiff Shannon Spalding and to have Plaintiffs Spalding and Brittni Zacher withdrawn as named plaintiffs. (Dkt. No. 53.) As to Plaintiff Spalding, Counsel claims that Ms. Spalding has ceased communicating with counsel and failed to appear at her noticed deposition. (Pls.' Mot. at 2.) Plaintiffs' counsel claims that Ms. Zacher has stated that she no longer wishes to participate in the litigation, and her noticed deposition did not go forward. Counsel served copies of the motion on Plaintiffs via email and U.S. Mail. (Dkt. No. 54.) Defendants did not file an opposition.

On October 15, 2014, the Court issued an order to show cause to Plaintiffs Spalding and Zacher with a response date of October 31, 2014. (OSC, Dkt. No. 59.) Ms. Zacher was ordered to submit a declaration under penalty of perjury confirming that she wanted to be withdrawn as a named plaintiff. On October 29, 2014, Plaintiffs' counsel filed a declaration with an email attached confirming Ms. Zacher's wish to no longer serve as a named plaintiff and that she did not have access to a printer to print and sign a declaration. (Decl. of Eric Levinrad, Dkt. No. 68, Ex. 1.) Since the email was from Ms. Zacher's email account, this is sufficient to confirm her wish to withdraw as a named plaintiff. Ms. Zacher may, however, participate as a class member.

1 Ms. Spalding was ordered to show cause on or before October 31, 2014 to explain why the
2 law firm of Wolf, Rifkin, Shapiro, Schulman Rabkin, LLP should not be withdrawn as her counsel
3 in this case, and submit a declaration under penalty of perjury to either (1) confirm that she longer
4 wishes to be a party to this litigation or (2) explain why she did not appear at her deposition
5 despite wishing to remain a named plaintiff. Ms. Spalding was ordered to file her reply with the
6 court by mail. Plaintiffs' counsel served the order to show cause on Ms. Spalding via email and
7 U.S. Mail. (Dkt. No. 61.) Plaintiff Spalding did not file a response as ordered. Thus, as to Ms.
8 Spalding, this motion may be granted as unopposed.

9 On November 6, 2014, the Court held a hearing at which neither Ms. Spalding nor Ms.
10 Zacher appeared.

Under Civil Local Rule 11-5(a), “[c]ounsel may not withdraw from an action until relieved by order of Court after written notice has been given reasonably in advance to the client and to all other parties who have appeared in the case.”

14 Accordingly, Plaintiffs' counsel's motion to withdraw as counsel for Shannon Spalding is
15 GRANTED as unopposed. Additionally, Plaintiffs' motion for withdrawal of Shannon Spalding
16 and Brittni Zacher as named plaintiffs is also GRANTED. Since Ms. Spalding is no longer a party
17 to this action, any individual claims against Defendant Bloomin' Brands, or any other remaining
18 defendants, are dismissed without prejudice. This dismissal does not bar Ms. Spalding from
19 participating as a class member.

20 Plaintiffs shall serve a copy of this order on both Shannon Spalding and Brittni Zacher.

21 IT IS SO ORDERED.

22 | Dated: November 6, 2014

KANDIS A. WESTMORE
United States Magistrate Judge